Office Memorandum
United States Government
Comptroller of the Currency

Date: February 26, 1973

To : William B. Camp
Comptroller of the Currency

I concur.

s W. B. Camp

From : Thomas G. DeShazo
Deputy Comptroller of the Currency

s/ TGD

Subject: Application to organize Northwest National Bank of Fayetteville, Fayetteville, Washington County, Arkansas.

By the attached telegram dated February 9, 1973, nine financial institutions[1] request the Comptroller stay the effect of his approval, issued February 5, 1973, of the captioned application pending his issuance of formal findings of fact and conclusions of law in connection with the application's approval.

The new bank application here involved was accepted for filing September 6, 1972. Thereafter, in accordance with customary procedures, competing banks and supervisory agencies were notified of the filing of the application and a full-field in-

[1] McElroy Bank, Fayetteville, Arkansas; First National Bank, Fayetteville, Arkansas; First State Bank, Springdale, Arkansas; First National Bank, Springdale, Arkansas; Bank of Elkins, Elkins, Arkansas; Bank of Lincoln, Lincoln, Arkansas; Farmers & Merchants Bank, Prairie Grove, Arkansas; American Savings & Loan Association, Springdale, Arkansas; and Fayetteville Savings & Loan Association, Fayetteville, Arkansas.

vestigation was conducted by a national bank examiner. In addition, pursuant to the request of competing banks, a hearing was held at the Office of the Regional Administrator, Eighth National Bank Region, Memphis, Tennessee, on November 21, 1972. Testimony and documentary exhibits were submitted by applicants and protestants at the hearing. Additional documentary statements were submitted and made a part of the file subsequent to the hearing. The public file was closed on December 6, 1972.

Thereafter, the entire record as developed was reviewed by the Regional Administrator, who concurred with the opinion of the investigating national bank examiner, that the proposed directors and management were unsatisfactory and that the applied-for bank would not satisfy the needs and convenience of the banking public. The Washington staff in reviewing the application was divided in its recommendations—the Bank Organization Division Director and senior economist concurred in the view of the investigating examiner and the Regional Administrator that the application should not be approved. However, on January 26, 1973, I recommended favorable action on the application, concluding that staff recommendations against approval were not warranted and not based upon evidence revealed by the administrative record, but, on the contrary, I concluded that the proposed management was adequate and needs and convenience of the community would be satisfied. Upon review of the file, the Comptroller's approval of the application was issued February 5, 1973. Some of the salient facts developed in the record reviewed by the Comptroller are summarized below.

Applicants proposed to locate the new bank on Highway 71 North, Fayetteville, Washington County, Arkansas. Washington County, located in the northwest corner of the state, has experienced marked development within the last two decades. Today the county's balanced economy contains agricultural, in-

dustrial, and other commercial elements. The county economy has shown tremendous expansion during this period with employment more than tripling and annual payrolls being multiplied eight-fold. Income within the county has made significant advances to the point that the per capita income for Washington County is today the third largest in the State of Arkansas. Retail sales for the last decade alone have increased from $50 million to $150 million. The county's population has more than doubled within the last two decades and housing construction has been vigorous. All of these dramatic gains in population, employment, income and trade have resulted in relatively high growth rates in deposits for the commercial banks serving the area.

Applicants have proposed to locate the new bank on Route 71 North in the northern portion of Fayetteville. The proposed primary service area for the bank is to include the entire northern section of Fayetteville and the southern portion of neighboring Springdale. This area of Washington County, which was virtually undeveloped in 1950, contained only 12% of Fayetteville's population by 1960, but more than doubled its population to approximately 28% by 1970, and it is estimated that by 1975 the area will contain a third or more of Fayetteville's entire population. In addition to the expected continued growth of the north area of Fayetteville, it is observed in the investigation report that much new growth is now occurring in Springdale, the south portion of which is included in the proposed bank's service area. Most of this growth occurring both in Fayetteville and Springdale is centered along U.S. Highway 71 where the applicants propose to locate their new bank. Indeed, applicants' proposed service area is presently the location of virtually all expansion within Fayetteville. The service area's population is currently approximately 12,000. The character of the area is largely residential, with more than 2,300 single family dwellings in 1970, of which approximately 64% were owner-occupied and additionally, some 200 or more multi-

family dwelling units. The average value of the single family structures is approximately $21,000, with average monthly rental of rental units in excess of $100 a month, all of which demonstrates high quality of housing and relative affluence of the residents. Much new housing is currently under construction and expansion is expected to continue.

The area also enjoys good commercial development with in excess of 200 retail stores and professional offices, many of which are established along Highway 71 and the largest single concentration of commercial stores in the Fayetteville area, the Northwest Arkansas Plaza Shopping Center. This Center, just half a mile north of the proposed bank site, covers almost 50 acres with 450,000 square feet of floor space occupied by 37 businesses and parking space for approximately 3,000 automobiles. The space within the Center is currently 95% leased, with leases running for ten years or more. Major tenants include national, regional, and locally owned firms (Sears, Woolworth's, Kinney Shoes, Dillard's Department Store, etc.), constituting a regional shopping center for the entire Fayetteville area. The record shows that the developers of this shopping center have indicated an intention to expand it to an overall capacity of 50 stores, including three department stores. A second shopping center, Evelyn Hills Shopping Center, is located approximately 2½ miles south of the proposed bank site. This Center contains almost 200,000 square feet of rental space and parking for 1,200 automobiles. This Center, too, is a regional shopping attraction with Montgomery Ward and Western Auto among its 23 tenants. Statistics and projections indicate that future expansion of north Fayetteville will continue.

Applicants' proposed site for the new bank is on U. S. Highway 71 in the north portion of Fayetteville. Although at the hearing, protestants indicated that the site might have problems of ingress and egress, situation of the bank on Route 71 (or

North College) is a particularly advantageous one from the point of view of convenience considering the many commercial establishments which exist along that route, nearby shopping centers, and the significant flow of traffic along Highway 71. The strategic location of the bank on U. S. Highway 71 will enable it to capture substantial deposit and loan business from Highway 71 users who live or work at locations within the proposed service area as well as from patrons of local business establishments.

Within the proposed service area, there are two branches of the two Fayetteville banks, The McIlroy Bank with approximately $26 million in deposits and The First National Bank of Fayetteville with approximately $16 million in deposits. In spite of the relative conservatism of these two banks, they have realized combined deposit growth of approximately $10 million within the last two years. It should also be noted that state law currently prohibits state bank branches from accepting applications for or making loans, although there is currently a bill within the state legislature which, if passed, will provide for city-wide full-service branching. Also recently, the State Commissioner of Banks denied the Bank of Elkins permission to relocate its main office to Fayetteville.

Both the investigating examiner and the Regional Administrator have stated in the examination report that there appears to be a genuine need for additional full-service banking facilities within the proposed area. Indeed, subsequent to the public hearing, 80 letters were received by the Regional Office from merchants and others specifically requesting that the proposed bank be approved. It seems evident that current and projected expansion in housing and commerce and express desire of merchants and others in addition to growth of existing banks ensures the necessity for and substantiates the prospective profitability of the proposed additional banking facilities without significant injury to existing banks.

Criticism of the bank's proposed management by the investigating examiner and concurrence in that criticism by the Regional Administrator is unwarranted and not based upon evidence contained in the administrative record. The proposed management for the new bank appears to be a representative crosscut of the community with the capacity to properly direct the functions of the new bank. Mr. Cook, proposed President of the new bank, has had varied and ample banking experience to qualify him as Senior Officer of the bank. The administrative file reveals nothing to disqualify any of the proposed Directors.

Competing banks objecting to this application did not challenge the character, ability, or financial resources of the applicants nor suggest that the application in any respect fails to conform with statutory requirements. Protestants argued, instead, that the application should be denied because:

(1) the banking needs of the area in protestants' view are being adequately served by existing banks;

(2) the granting of a new bank charter would be injurious to the continued growth of existing banks; and

(3) requisite needs and convenience of the community to be served have not been demonstrated by the applicants.

The arguments advanced by the competing banks were not persuasive. The present and projected economic growth of the service area provides a more than adequate base for applicants' bank and all existing banks in the area and the need for a convenient source of full banking services in the heavily trafficked commercial area along U. S. Highway 71 presents an apparent present need for the proposed bank. Moreover, the additional banking competition offered by a new entry would, in our experience, result in the improvement of banking services by the existing banks to the ultimate benefit of the entire banking public.

In summary, therefore, the application was approved upon a record demonstrating compliance in all respects with applicable statutory requirements and, from a supervisory standpoint, exhibiting adequate managerial and capital resources, earnings prospects, and prospect of providing a convenient source of needed banking services to the public.

Request for Administrative Stay

As indicated above, there is a strong basis in the record for the approval of this application. Moreover, protestants' request to stay the issuance of a charter pending the issuance by this Office of additional findings of fact and conclusions of law is unwarranted.

Protestants, in effect, request an "automatic" and indefinite stay of the Comptroller's approval without any attempt whatsoever to demonstrate irreparable harm from the issuance of a charter to the new bank. Moreover, as indicated above, an independent review of the record confirms that approval of the charter will not have any significant detrimental effect upon existing banks but will, instead, provide additional competitive banking services to the community.

Nor does protestants' demand for additional "findings of fact" and an "opinion" of the Comptroller concerning the approval, in my judgment, warrant the issuance of an extraordinary administrative stay. It should be noted that protestants were given full opportunity to participate in the investigatory proceedings concerning the new bank application and all information submitted by protestants was considered by this Office. Under such circumstances, it seems particularly unlikely that protestants are unaware of the strong economic basis in the record for approval of the charter application and protestants did not suggest that any other supervisory consideration would warrant disapproval.

Finally, if protestants truly believe that the Comptroller's decision to approve the charter application was in any respect arbitrary, the present record—without expansion by issuance of additional formal findings and conclusions—is perfectly sufficient to expose the basis of the approval. Indeed, administrative records substantially similar to the one here involved have, as you know, proven perfectly adequate and acceptable to the courts in literally scores of cases involving the decisions of this Office and other banking regulatory agencies. Inasmuch as there is no supervisory peculiarity in the present case which would warrant elucidation in a formal opinion, I believe that the issuance of a formal opinion as demanded by protestants in their telegram would unnecessarily expand the already extensive administrative record without serving any useful purpose and would delay needed banking services in a manner detrimental to the best interests of the public.

Conclusion

For the foregoing reasons, I conclude that the approval of the charter application was in all respects lawful, and I recommend that protestants' requests for an indefinite administrative stay of the Comptroller's approval and expansion of the administrative record by the preparation of additional findings or a formal opinion be denied.